

**ON-CALL CONSTRUCTION MATERIALS TESTING SERVICES AGREEMENT
FOR THE CITY OF SAN ANTONIO**

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Agreement is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas, hereafter referred to as "City" and

FIRM NAME

ADDRESS

hereafter referred to as "Contractor", said Agreement being executed by City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by Contractor for on call material testing services, hereinafter set forth.

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ARTICLE I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "Application for Compensation" means written form for a request from Contractor to be paid for completed work.
- 1.2 "City" or "Owner" means the City of San Antonio, Texas.
- 1.3 "Compensation" means amounts paid for services under this Agreement.
- 1.4 "Contractor" means NAME OF FIRM and its officers, partners, employees, agents and representatives, and all sub-contractors, if any, as well as all other persons or entities for which Contractor legally is responsible.
- 1.5 "Director" means the Director of City's Aviation Department or his designee.
- 1.6 "FAA" means the Federal Aviation Administration.
- 1.7 "General Conditions" means the General Conditions for City of San Antonio Construction Contracts document used in conjunction with this Agreement that states the minimum performance requirements of Contractor, as well as the rights and responsibilities of both City and Contractor. Both Contractor and City are bound to the terms and conditions of these General Conditions.
- 1.8 "Plans and Specifications" means the construction documents.
- 1.9 "Project" means the specific construction materials testing services for which a Finalized Task Order is negotiated and executed by both Parties hereto.
- 1.10 "Proposal" means Contractor's Proposal to provide services for this Project.
- 1.11 "SAMSA" means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised by Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- 1.12 "SAWS" means the San Antonio Water System, Inc.
- 1.13 "Schedule of Values" means the values allocated to materials and various portions of the work,

prepared in such form, and supported by such data to substantiate its accuracy as City may require.

- 1.14 "Scope of Services" means the services described in Article IV Scope of Services.
- 1.15 "Services" means those services described in the Scope of Services as set out in a Finalized Task Order.
- 1.16 "Total Compensation" means the Not-to-Exceed amount of this Agreement.
- 1.17 "Finalized Task Order" means a written agreement, executed by both and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project as further defined herein.
- 1.18 "Task Order Request" means a request to Contractor to submit a Proposal for a specific Project as further defined herein.

ARTICLE II. COMPENSATION

- 2.1 The Compensation for all services included in this Agreement SHALL NOT EXCEED AND NO/100 CENTS (\$.00). Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Contractor at any time Contractor is in default under this Agreement.
- 2.2 Contractor shall submit a Proposal for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposal. City's approval shall be evidenced by the Finalized Task Order executed by both parties. Finalized Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order will become a part of this Agreement.
 - 2.2.1 Contractor understands, accepts and agrees that City has entered into multiple professional services agreements with other Contractors and has the authority to assign work tasks at its sole discretion.
 - 2.2.2 Contractor understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of services, if any, Contractor may be extended under this Agreement.
- 2.3 Each Task Order amount shall be based on the Scope of Services for a particular Project and will be based on the pre-priced tasks, unit prices, and/or hourly rates included in Exhibit 1 attached hereto, incorporated herein and made a part of this Agreement.
- 2.4 Reimbursable Expenses (If Applicable)

When authorized by City in writing, Contractor will be entitled to reimbursement at actual incurred cost without markup for services and related expenses for the following items:

- 2.4.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs will be limited to costs directly associated with Contractor's performance of Service under this Agreement and must comply with the Aviation Department Consultant and Contractor Reimbursable Expense Policy, Exhibit 4 hereto. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Contractor shall provide detailed receipts for all reimbursable charges. Travel expenses, if any, shall be negotiated with each Task Order issued. Kindly note that City does not pay for Contractor's travel within SAMSA.

- 2.4.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs, if any, shall not exceed the amount noted in Article IV herein without further written approval of City. Contractor shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Task Order.
- 2.4.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs shall not exceed the amount noted in Article IV herein without further approval of City. Contractor shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Task Order. Note that the City does not allow a markup on any of the above reimbursable items and only will reimburse approved hard costs incurred.

City will not pay markups for Subcontractor work. There shall be no markup on reimbursables from Subcontractors.

ARTICLE III. METHOD OF PAYMENT

- 3.1 Contractor shall submit invoices no more than once monthly. Payments to Contractor shall be in the amount shown on the invoices consistent with the Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and/or which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.
 - 3.1.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service as set out in Contractor's Fee Schedule in Exhibit 1 hereto, and the Finalized Task Order.
- 3.2 Contractor shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others in connection with the Project and the performance of the work and shall, if requested, provide City with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this Agreement, unless Contractor is able to demonstrate to City bona fide disputes associated with the unpaid subcontractor and its services. Contractor shall include a provision in each of its sub-agreements imposing the same payment obligations on subcontractors as are applicable to Contractor hereunder and, if City so requests, shall provide copies of such payments by Contractor to City. If Contractor has failed to make payment promptly to a subcontractor for the Services for which City has made payment to Contractor, City shall be entitled to withhold payment to Contractor to the extent necessary to protect City.
- 3.3 Contractor warrants that title to all Services covered by an Application for Payment will pass to City no later than the time of payment. Contractor further warrants that upon submittal of an Application for Compensation, all Services for which Applications for Compensation previously have been issued and payments received from City shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Contractor or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONTRACTOR SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONTRACTOR.**
- 3.4 Contractor may submit a request for partial compensation prior to Finalized Task Order's completion. A request for partial compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed as reflected in the progress report and approved by City at its sole discretion. Compensation also may be made based solely on the tasks and services completed by

Contractor and approved by City and the associated unit price for each Service/Project, as may be described in the fee schedule included in Exhibit 1 hereto.

3.5 Project Close Out and Final Payment:

3.5.1 Final billing shall indicate: "Final Bill - no additional compensation is due to Contractor".

3.5.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Contractor is responsible due to:

3.5.2.1 delays in the performance of Contractor's work;

3.5.2.2 third-party claims filed or reasonable evidence indicating the probable filing of such claims, unless security acceptable to City is provided by Contractor;

3.5.2.3 failure of Contractor to make payments properly to Subcontractors or vendors for labor, materials or equipment;

3.5.2.4 reasonable evidence that Contractor's work cannot be completed for the amount remaining unpaid under this Agreement;

3.5.2.5 damage to City; or

3.5.2.6 persistent failure by Contractor to carry out the performance of its services in accordance with this Agreement.

3.5.3 When the above reasons for withholding are removed or remedied by Contractor, compensation of the amount withheld shall be made by City within a reasonable time. City shall not be deemed in default of this Agreement by reason of withholding compensation as provided for in this Article III.

3.5.3.1. In the event of any dispute(s) between the parties, regarding the amount properly compensable for any phase of work or as final compensation or regarding any amount that may be withheld by City, Contractor shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided in the Agreement documents for the resolution of such dispute. In the event Contractor does not initiate and follow the claims procedures provided in the Agreement documents in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Contractor.

3.5.3.2 City shall make final compensation of all sums due Contractor not more than thirty (30) days after Contractor's execution and delivery of a mathematically accurate final Pay Application.

3.5.3.3 Acceptance of final compensation by Contractor shall constitute a waiver of claims except those previously made in writing and identified by Contractor as unsettled at the time of final application for compensation.

3.5.3.4 Contractor agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services. In the event that a dispute arises over any aspect of Work performed by Contractor within the four (4) years after completion of Services provided under this Agreement, Contractor shall retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after final resolution of any dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records and shall have the right to audit same.

ARTICLE IV. SCOPE OF SERVICES

- 4.1 Contractor understands, accepts and agrees that City has entered or may enter into multiple On-Call Construction Materials Testing Agreements with other contractors and City has the authority to assign services under this and other Agreements at its sole discretion. As stated in Article II herein, Contractor understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of work, if any, which Contractor may be extended under this Agreement.
- 4.2 This Agreement is an On-Call Agreement or indefinite delivery agreement for on-call construction materials testing and other such services that are required for Contractor to provide or are associated with on-call construction materials testing and specific requirements as to location, conditions, procedures and associated services pertaining to a Project, shall be negotiated and set out in individual Finalized Task Orders for each request, which Finalized Task Orders shall be incorporated into and shall become a part of this Agreement.
- 4.3 Contractor shall provide all labor, equipment and transportation necessary to complete all services, agreed to by Finalized Task Order by Contractor pursuant to this Agreement, in a timely manner throughout the term of this Agreement. Additionally, Contractor shall provide staff for regular, overtime, night, weekend and holiday service, as requested or required by City. Persons retained by Contractor to perform work pursuant to this Agreement shall be employees or Subcontractors of Contractor.
- 4.4 Immediately upon City Council approval of this Agreement, Contractor shall, at Contractor's expense, obtain 1) Airport Personnel Identification Badges for each employee who may perform work hereunder, and 2) Airfield Driver's Licenses, as needed, for employees that may have a need to operate a vehicle within the Airport Operations Area. Contractor, at its own expense, shall maintain sufficient staff security clearances, badges and driving operator licenses to be able to initiate CMT Services in a timely manner upon issuance of a notice to proceed.
- 4.5 Contractor shall not commence service on any Finalized Task Order authorized under this Agreement until being thoroughly briefed on the scope of a project and being notified in writing by City to proceed. Should the scope of a Finalized Task Order subsequently change, either Contractor or City may request a review of the anticipated services with an appropriate adjustment in compensation.
- 4.6 Contractor, in consideration for the compensation herein provided, shall render the professional services described in this Section IV necessary for the advancement of the Task and Project to Substantial Completion.
- 4.7 Contractor shall perform its obligations under this Agreement in accordance with the Scope of Services outlined herein and in each authorized Finalized Task Order, in accordance with the Contractor's Fee Schedule in Exhibit 1 hereto. The Scope of Services fully shall be described in Contractor's Proposal, as revised in accordance with negotiations with and approval of City, for each authorized task and as provided in this Agreement.
- 4.8 All services and work performed under this Agreement must be conducted in full conformance with the provisions of this Agreement and be in compliance with all FAA requirements and the American Society for Testing and Material ("ASTM") standards. Additionally, Contractor shall only use testing laboratory(ies) which comply with all applicable FAA requirements and ASTM standards
- 4.9 For all tests performed pursuant to this Agreement, Contractor shall promptly deliver to Department, within such timeframe required to avoid any delay in construction progress, two (2) paper copies and one (1) electronic copy in Adobe PDF format on a compact disc of all reports, on the testing laboratory's letterhead and signed by a Professional Engineer or appropriate licensed Professional, of the test results which include:

- a. The Project name,
 - b. Date(s)/time(s)/location(s) of service,
 - c. Report Identification Number,
 - d. Type and quantity of tests performed
 - e. Test Results
 - f. Standards Controlling the Test(s)
 - g. Compliance or noncompliance with the specifications
 - h. Any extenuating circumstances affecting the test(s) or result(s)
 - i. Observations to include service time chargeable to delays and rescheduling.
 - j. If manpower is involved, provide names, job classification and hours.
 - k. Number of trips with work performed on the Project.
 - l. Name of person who ordered the test(s).
 - m. Identify any and all re-test services.
- 4.10 Contractor is responsible for ensuring that at the end of each Project, the construction materials testing lab uses test results to follow FAA Section 110, Method of Estimating Percentage of Material within Specification Limits (PWL) to provide a table on concrete and asphalt, if applicable.
- 4.11 Contractor's Fee Schedule, which includes pre-priced tasks, unit prices and/or hourly rates, is incorporated by reference herein, attached hereto and labeled as Exhibit 1.

ARTICLE V. TIME AND PERIOD OF SERVICE

- 5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and the execution by both parties and shall remain valid for the period of five (5) years.
- 5.2 Time is of the essence of this Agreement. Contractor shall perform and complete its obligations for the various Tasks of services under Article IV herein in a prompt and continuous manner so as to not delay the development of the design services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City and construction contractor. If, upon review of Finalized Task Orders, corrections, modifications, alterations or additions are required of Contractor, these items shall be completed by Contractor before that Finalized Task Order is approved.
- 5.3 Contractor shall not proceed with the next appropriate Task Order without written authorization from City. City may elect to discontinue Contractor's services at the end of any Task Order for any reason or for no reason. However, if circumstance dictates, City may make adjustments to the scope of Contractor's obligations at any time to achieve the required services.
- 5.4 Contractor shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Contractor's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Contractor shall be significantly extended under this provision, Contractor shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines that Contractor is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement and/or deny Contractor's request for an extension.
- 5.5 This Agreement shall remain valid for a period which reasonably may be required for the design, award of the Construction agreement and the completion of the Project, including any extra work and any required extensions thereto, unless discontinued as provided for elsewhere in this Agreement.

ARTICLE VI.
PROJECT SERVICES REQUEST PROCESS

- 6.1 Necessary on-call construction materials testing work requirements shall be established with each Project-specific Finalized Task Order.
- 6.2 When City has a Project for which it desires to procure on-call construction materials testing services, City shall notify Contractor by issuing a Task Order Request. Each Task Order Request shall include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, drawings, etc.) needed by Contractor to prepare a Proposal, Project schedule and any specific deadlines for performance of on-call construction materials testing services, and a deadline for providing City with a Proposal based on the above.
- 6.3 Contractor shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: Scope of Services; specific staffing; an estimate of task cost, based on rates and fees set out in Exhibit 1. Contractor shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Contractor agrees to perform the requested service(s) within the time stated in the Task Order Request.
- 6.4 Contractor and City shall negotiate the Proposal. Once Contractor and City reach mutual agreement as to scope, staffing, scheduling and cost, City shall issue a Finalized Task Order to be executed by both parties evidencing the agreed to scope, staffing, schedule and costs.
- 6.5 The Director or his/her designee has the authority to execute a Finalized Task Order on behalf of City, so long as such Finalized Task Order does not exceed the total Agreement value and funds are provided for in the Project budget as allocated by City Council.
- 6.6 Contractor shall not proceed with services until a Finalized Task Order has been executed, Contractor receives a written notice to proceed by City and all documents required by City in advance of commencement of work, to include proof of insurance, have been provided by Contractor to City. Any services provided or expenses incurred, prior to receiving a written notice to proceed from City or provided or incurred after the expiration of this Agreement on a particular Finalized Task Order will be at Contractor's sole risk and expense and may not be reimbursable by City.
- 6.7 Actual amounts billed shall not exceed the total amount set out in the Finalized Task Order.
- 6.8 Each Finalized Task Order shall be incorporated herein for all purposes. Each Finalized Task Order shall be numbered sequentially, starting with number one (1) and must reference this Agreement.
- 6.9 Contractor shall not invoice for any work associated with the Task Order Request process, including development of the Proposal and the associated Task Order negotiation.

ARTICLE VII.
COORDINATION WITH THE CITY

- 7.1 Contractor shall hold periodic conferences with City representatives through the end of the Project. The Project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Contractor in this coordination, City shall make available, for Contractor's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to this particular Project, at no cost to Contractor. However, any and all such information shall remain the property of City and shall be returned by Contractor upon termination, completion of the Project or if instructed to do so by City.

- 7.2 The Director and/or his/her designee shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director and/or his/her designee shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions, with respect to materials, equipment, elements and systems pertinent to Contractor's services.
- 7.3 City promptly shall give written notice to Contractor whenever City observes, discovers or otherwise becomes aware of any defect in Contractor's services or any development that affects the scope or timing of Contractor's services.
- 7.4 Unless otherwise required by City, City shall furnish permits and approvals obtained from all governmental authorities having jurisdiction over the Project and other such approvals and consents from others, as may be necessary, for the completion of the Project. City will notify Contractor of permits obtained prior to the Contractor submitting a Task Proposal. Contractor shall provide City reasonable assistance with regard to furnishing such approvals and permits, such as the furnishing of data compiled by Contractor pursuant to other provisions of the Agreement, but Contractor shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefore under other provisions of this Agreement.

ARTICLE VIII. REVISIONS TO DOCUMENTS

Contractor shall make, without expense to City, such revisions to the drawings, reports or other documents as may be required to meet the needs of City and which are within the Scope of Services. After the approval of reports or other documents by City, any City request for revisions, additions or other modifications which involve extra Contractor services and expenses shall be by means of a negotiated Finalized Task Order

ARTICLE IX. OWNERSHIP OF DOCUMENTS

- 9.1 All documents not related to any Task performed by Contractor, including drawings, estimates, specifications and all other documents and data previously owned by Contractor, shall remain the property of Contractor as instruments of service. However, it is to be understood that City shall have free access to all such information and City retains the right to make and retain copies of drawings, estimates, specifications and all other documents and data of Contractor. Any reuse by City of any Contractor drawings, estimates, specifications and any other documents and data previously owned by Contractor, without specific written verification or adaptation by Contractor will be at City's sole risk and without liability or legal exposure to Contractor.
- 9.2 Contractor acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of a Task and this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to City, at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use. City will be providing reports developed pursuant to this Agreement to the FAA.
- 9.3 Contractor agrees and covenants to protect any and all proprietary rights of City in any materials provided to Contractor. Such protection of proprietary rights by Contractor shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Contractor by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon request by City and/or upon termination or completion of this Agreement.

- 9.4 Contractor hereby assigns all statutory and common law copyrights to any copyrightable work to City that, in part or in whole, was produced from this Agreement, including all equitable rights. No reports, maps, project logos, drawings, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Contractor. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, as otherwise specified herein). Contractor shall, at its own expense, defend all suits or proceedings instituted against City and Contractor shall pay any award of damages or loss resulting from an injunction against City, insofar as the same is based on any claim that materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.
- 9.5 Contractor may make copies of any and all documents and items for its files. Contractor shall have no liability for changes made to or use of the drawings, specifications and other documents by Architects and/or Engineers or other persons, subsequent to the completion of the Project. City requires that Contractor appropriately mark all changes or modifications on all drawings, specifications and other documents by Architects and/or Engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 9.6 Copies of documents, which may be relied upon by City, are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Contractor. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Contractor to City or public utility only are for convenience of City or public utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 9.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Contractor including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Contractor or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Contractor to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Contractor or its suppliers.

ARTICLE X. TERMINATION AND/OR SUSPENSION

10.1 Termination Without Cause.

- 10.1.1 This Agreement may be terminated by City without cause, prior to Director giving Contractor written notice to proceed, should Director, in his/her sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Contractor.
- 10.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's notice to proceed, either for the City's convenience or because of Contractor's failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.
- 10.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Contractor's services properly performed prior to the effective date of termination an equitable adjustment in the contract price shall be made. Contractor shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Contractor be entitled to compensation for any unnecessary or unapproved work, performed during time between

the issuance of the City's notice of termination and the actual termination date.

- 10.1.4 If the termination is due to Contractor's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the City for any additional cost occasioned to the City thereby.
- 10.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 10.1.3 of this clause.
- 10.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- 10.1.7 This Agreement may be terminated by the Contractor, at any time after issuance of the Director's notice to proceed, upon sixty (60) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.
- 10.2 Defaults With Opportunity for Cure. Should Contractor fail, as determined by the Director, to satisfactorily perform the duties set out in Article IV. Scope of Services; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Contractor shall have ten (10) calendar days after receipt of the written notice to cure such default. If Contractor fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.
- 10.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Contractor given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Agreement, in whole or in part, "for cause":
 - 10.3.1 Contractor makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or
 - 10.3.2 Contractor violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or
 - 10.3.3 Contractor violates any rule, regulation or law to which Contractor is bound or shall be bound under the terms of this Agreement; or
 - 10.3.4 Contractor attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or
 - 10.3.5 Contractor ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Contractor's assets or properties: or

- 10.3.6 Contractor fails to comply in any respect with the insurance requirements set forth in this Agreement.
- 10.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 10.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed specifications, designs, plans, exhibits, documents, papers, records, charts, reports, and any other materials or information produced by, or provided to Contractor, in connection with the services rendered by Contractor under this Agreement, to include all reproductions of such work products, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents.
- 10.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**
- 10.7 City, as a public entity, has a duty to document the expenditure of public funds. Contractor acknowledges this duty imposed upon City. Contractor further acknowledges that the failure of Contractor to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Contractor of any and all rights or claims to payment for services performed under this Agreement by Contractor.
- 10.8 Failure of Contractor to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Contractor of any and all rights or claims to collect monies that Contractor otherwise may be entitled to for services performed under this Agreement.
- 10.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.
- 10.10 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written notice of suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Contractor of said notice. The notice of suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon Contractor's receipt of said notice.
- 10.11 Contractor's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Contractor shall have the right to terminate this Agreement. Contractor may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all

the requirements set out in Paragraphs 8.5 and 8.6 above, related to the Orderly Transfer and Fee Payment.

10.12 Procedures Upon Receipt of Notice of Suspension.

10.12.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Contractor shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

10.12.2 Contractor shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

10.12.3 All completed or partially completed designs, plans, specifications, studies, and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Contractor until such time as Contractor may exercise the right to terminate.

10.12.4 During the period of suspension, Contractor shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

10.12.5 Any documents prepared in association with this Agreement shall be delivered to City by Contractor, as a pre-condition to final payment, within thirty (30) calendar days after receipt by City of Contractor's notice of termination.

10.12.6 In the event Contractor exercises its right to terminate this Agreement at any time after the effective Suspension date, Contractor shall submit, within forty-five (45) calendar days after receipt by City of Contractor's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

10.12.7 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Contractor that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

10.13 City, as a public entity, has a duty to document the expenditure of public funds. Contractor acknowledges this duty on the part of City. To this end, Contractor understands that failure of Contractor to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by Contractor of any portion of the fee for which Contractor did not supply such necessary statements and/or documents.

**ARTICLE XI.
CONTRACTOR'S WARRANTY**

Contractor warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care that typically are exercised by similar consulting professionals performing similar services in Bexar County, Texas. Contractor further warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for Contractor, to solicit or secure this Agreement and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person any commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of Article X herein.

**ARTICLE XII.
DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

- 12.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.
- 12.2 The Contractor agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Contractors are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.
- 12.3 Contractor specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.
- 12.4 The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Contractor agrees to include this clause in each sub-consultant contract the prime consultant signs with a sub-consultant.
- 12.5 The Contractor agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Contractor further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.
- 12.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Contractors shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

- 12.7 Contractor shall not terminate for convenience a DBE sub-consultant submitted with the proposal and approved by the City or the Aviation Department (or an approved substitute DBE firm) and then perform the work of the terminated sub-consultant with its own forces or those of an affiliate, without prior written permission by the City.
- 12.8 During the term of this Agreement, the Contractor must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.
- 12.9 The Contractor shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit 2.
- 12.10 Failure or refusal by a Proposer or Contractor to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST

- 13.1 Except as otherwise required herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Professional services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.
- 13.2 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Contractor assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Contractor shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.
- 13.3 Contractor agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with the terms hereof.

ARTICLE XIV. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any Task or work under this Agreement, Contractor shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to City's Aviation Department, which clearly shall be labeled "Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as Contractor's proof of insurance. The certificate(s) or form must have the agent's signature, phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Aviation Department. No officer or employee other than City's Risk Manager shall have authority to waive this requirement.
- 14.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits, when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- 14.3 Contractor's financial integrity is of interest to City. Therefore, subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of not less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2) 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability 5) f. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$5,000,000 per occurrence (to include AOA access)
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

- 14.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by

City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

- 14.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Planning & Development Department
9800 Airport Boulevard
San Antonio, Texas 78218

- 14.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 14.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 14.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 14.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 14.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City

shall be limited to insurance coverage provided..

- 14.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XV. INDEMNIFICATION

- 15.1 **Contractor covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages (including but not limited to direct, indirect, special, exemplary, punitive, incidental and consequential damages), losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, intellectual property infringements, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Contractor's negligent or intentional acts, errors or omissions under this Agreement, including any negligent or intentional acts, errors or omissions of Contractor, any agent, officer, director, representative, employee, consultant or subcontractor of Contractor, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 15.2 The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise the City in writing within 24 hours of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph.
- 15.3 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation or other employee benefit acts.
- 15.4 Acceptance of any deliverable or final designs, drawings, plans, specifications, or exhibits by the City shall not constitute nor be deemed a release of the responsibility and liability of the Contractor, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, plans, specifications, exhibits or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the in the Services, designs, working drawings, plans, specifications, or exhibits or other documents and work prepared by said Contractor.

**ARTICLE XVI.
CLAIMS AND DISPUTES**

- 16.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, an adjustment or interpretation of the Agreement terms, payment of money, an extension of time or other relief, with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between City and Contractor arising out of or relating to this Agreement. Claims must be initiated by written notice. Every Claim of Contractor, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 Claims by Contractor or by City must be initiated in writing to the other party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.
- 16.3 Pending final resolution of a Claim, except as otherwise agreed to in writing, Contractor shall proceed diligently with performance of the Agreement and City shall continue to make payments in accordance with this Agreement.
- 16.4 If Contractor wishes to make a Claim for an increase in the time for performance, written notice, as stated in this Section XVI, shall be given. Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- 16.5 Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of this Agreement (such provision to survive any termination following such breach), the following standards will apply both to claims by Contractor and to claims by City:
- 16.5.1 No consequential damages will be allowed.
- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.
- 16.7 Alternative Dispute Resolution.
- 16.7.1 Each party is required to continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable under the circumstances.
- 16.7.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties hereto agree that they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management

representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute, the parties then shall proceed with mediation. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.7.3 Mediation.

- 16.7.3.1 In the event that City or Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
- 16.7.3.2 Request for mediation shall be in writing to the other party and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon mutual written agreement of both parties.
- 16.7.3.3 In the event City and Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- 16.7.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

ARTICLE XVII. SEVERABILITY

If, for any reason, any one or more Articles or Sections of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles or Sections of this Agreement but shall be confined in its effect to the specific Article, Section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, Section, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

ARTICLE XVIII. INTEREST IN CITY CONTRACTS PROHIBITED

- 18.1 No officer or employee of City shall have a financial interest, directly or indirectly, in any Agreement with City or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.
- 18.2 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as the City-owned utilities. Contractor's officer(s) or employee(s) has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the Agreement or sale:

- a. a City officer or employee;
- b. a City officer or employee's parent, child or spouse;
- c. a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or
- d. a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that Contractor, its officers, employees and agents are neither officers nor employees of City. Contractor further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

ARTICLE XIX. CONFLICTS OF INTEREST DISCLOSURE

Contractor must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes:

- a. being in a partnership or joint venture with a City officer or employee;
- b. having a contract with a City officer or employee;
- c. being joint owners of a business with a City officer or employee;
- d. owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or
- e. having an established business relationship with a City Officer or employee as a client or customer.

ARTICLE XX. STANDARD OF CARE/LICENSING

- 20.1 Services provided by Contractor under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- 20.2 Contractor shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.